

DECISION

Introduction

This hearing dealt with Cross Applications including:

The Tenant's March 5, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's March 13, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The hearing was attended by the Landlord's agent, M.M., a licensed property manager, and the Tenant T.B. Both parties agreed that the other named Tenant, is the Tenant's minor child.

Service of Notice and Evidence

I find that both parties were served with respective Notice of the dispute because both parties submitted their own applications regarding a 10 Day Notice to End Tenancy and both parties attended the April 9, 2024, hearing.

Preliminary Matters

I informed the Tenant during the hearing that I would be severing the other items from their application because I found them unrelated to the Tenant's request to cancel the 10-day notice to end Tenancy. I therefore sever the following from the Tenant's application under RTB Rule of Procedure 2.3:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

I severed these items because the Tenant testified that they inspected the unit prior to agreeing to rent starting February 1, 2024, and the Tenant made their application for dispute resolution on March 5, 2024, as noted above.

Issue(s) to be Decided

- is the landlord entitled to an Order of Possession?
- is the landlord entitled to a Monetary Order for Unpaid rent?
- Is either party entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord's Agent provided evidence of a written tenancy agreement that was signed by the Tenant on January 1, 2024. The agreement was to run for 12 months starting February 1, 2024. Monthly rent is \$2,100.00 as shown in this agreement, and a \$1,050.00 security deposit was collected. The parties agreed that the Tenant rents the back suite in the house, which is separate from the unit that is accessible from the door that can be seen at the front of the house from the street.

The parties agreed that the Tenant paid rent for February 2024 and has not paid rent for March 2024 or April 2024. The Tenant testified that they agree they do not have an Order from the RTB under section 26 of the Act allowing them to withhold rent from the Landlord.

The Tenant referred to their evidence submitted and claimed various problems in the rental unit. The Landlord's Agent referred to the Tenant's evidence and application for dispute resolution and testified that they have been attempting to work with the Tenant. The Landlord's Agent stated that a hot water tank has been replaced, and that they have been attempting to coordinate fireplace repairs but that the process has been difficult.

The parties agreed that the tenancy agreement is between the tenant and the owner of the property, and that the Landlord's Agent at the hearing, has been involved in this dispute since shortly after the tenancy began. The Landlord's Agent testified that there had been an agreement between the parties that the Tenant vacate at the end of February 2024 because of their concerns with the rental unit. However, the Tenant did not vacate.

The Tenant stated that they do not want to remain in the rental unit, that they have been packed since they moved into the unit, and that they have been trying to find a new place since February 20, 2024.

The Landlord's agent provided a copy of the 10-Day Notice to End Tenancy dated March 4, 2024. This Notice includes a stated move-out date of March 15, 2024, and identifies unpaid rent of \$2,100.00 because the parties agreed that rent was not paid for March 2024. The parties agreed that this Notice was served to the Tenant multiple ways including:

- A March 1, 2024 email to the Tenant from the Landlord's Agent
- Registered Mail that was returned to Sender with an indication that the Tenant moved
- Posted to the door on April 8, 2024
- Handed to the Tenant's 14-year-old child who signed a document acknowledging receipt of the Notice, of which an additional copy was left in the kitchen of the rental unit.
- The Tenant received this Notice dated March 4, 2024, on March 8, 2024

The Tenant acknowledged receipt of the Notice starting on March 1, 2024, and expressed frustration that the Landlord's Agent then served a copy of the Notice on their child. The Landlord's Agent stated that it was not ideal to serve the Notice to the child, and that the child was only involved because they were home in the unit when the Agent served a copy of the Notice to the door. The Landlord's Agent stated that proof of service to the door was provided as evidence.

The Landlord stated that they did not submit a copy of the Notice served by email to the Tenant as evidence because they did not believe that service by email was accepted under the Act. The Tenant testified that they accepted email service of that Notice.

The Tenant threatened to call the city and have the property condemned. The Landlord's agent testified that any repairs required are cosmetic.

Analysis

The landlord is responsible under RTB Rule of Procedure 6.6 to establish on the balance of probabilities, the validity of the notice to end tenancy. There is a three-part test, in accordance with the Act, that examines the validity of a notice to end tenancy including:

1. Service of the notice - section 88 and 90 of the Act
2. Specific information recorded on the notice - section 52 of the Act
3. Reason for the notice - section 46 of the Act

I reviewed the Tenant's evidence and find that they were served a different copy of the Notice by email on March 1, 2024, and that this version of the Notice was dated March 1, 2024. The Landlord stated that they did not submit this copy of the Notice as evidence because they did not believe that service by email was accepted under the Act.

I find that the Notice dated March 4, 2024, was served to the Tenant by Registered mail and to the door of the property on March 8, 2024. I deem the Tenant served with this Notice on March 8, 2024, because the Tenant testified that they received the Notice that day.

Regarding specific information recorded on the March 1, 2024, notice, I find that the notice complies with section 52 of the Act because:

- is signed and dated by the Landlord
- it gives the address of the rental unit as shown in the tenancy agreement
- it is provided on approved form RTB 30
- the notice specifies that \$2,100.00 in rent was owing at the time it was issued
- The effective date the Tenant must move out is March 11, 2024, which has passed.

Regarding specific information recorded on the March 4, 2024, notice, I find that the notice complies with section 52 of the Act because:

- is signed and dated by the Landlord
- it gives the address of the rental unit as shown in the tenancy agreement
- it is provided on approved form RTB 30
- the notice specifies that \$2,100.00 in rent was owing at the time it was issued
- The effective date the Tenant must move out is March 15, 2024, which has passed.

Regarding the Landlord's reasons for issuing the March 1, 2024, Notice, I find that \$2,100.00 was not yet owed when the Notice was issued because as shown in 46(1) of the Act:

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I therefore find that the Landlord had no grounds for issuing the Notice dated March 1, 2024. I cancel this Notice and find that it has no force or effect.

Regarding the landlord's reason for issuing the March 4, 2024, Notice, I find that the Tenant did not pay Rent on March 1, 2024, as required and have not paid any amount of rent since the Notice was issued. This is beyond the five days allowed under 46(4) of the Act. Furthermore, I find that the Tenant failed to dispute this Notice as required by 46(5) of the Act and is conclusively presumed to have accepted the End of their Tenancy.

Based on the above, I find that the March 4, 2024, notice to end tenancy is valid.

Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?

A landlord is entitled to request an Order of Possession under 55(2) of the Act.

I find that the Landlord is entitled to an Order of Possession for the 10-Day Notice dated March 4, 2024, under 52(2)(b) of the Act because the Tenant is conclusively presumed to have accepted the end of the tenancy. I also issue this Order of Possession because I find that the March 4, 2024, Notice is a valid Notice to End Tenancy that satisfies all requirements of the Act.

I find that this Order of Possession will be effective 7 days after service on the Tenant. I note that 7 days is longer than the two days permitted by RTB Policy Guideline 54. I provide this extra time because a 14-year-old lives in the unit with the Tenant. I do not provide any additional time because the parties agreed that rent has not been paid for two months.

Is the landlord entitled to a Monetary Order for unpaid rent?

As noted above, I find that the notice to end tenancy dated March 4, 2024, is valid.

I find that rent for the month of March 2024, in the amount of \$2,100.00 has not yet been paid by the Tenant. I also find that rent has not yet been paid for the month of April \$2,100.00. I will therefore award a pro-rated amount of \$1,173.68 in rent for April 2024, that should match the day the Landlord regains possession of the unit as shown in the calculations below:

$$\text{\$2,100.00} \times 12 = \text{\$25,200.00} / 365 = \text{\$69.04} \times 17 = \text{\$1,173.68}$$

In sum, I find that the landlord is entitled to an order for unpaid rent in the amount of \$3,273.68. I make this order under section 55(2) of the Act.

$\$2,100.00 + \$1,173.68 = \$3,273.68$.

Because evidence was also received that the Tenant paid a \$1,050.00 security deposit, the current value of this deposit must be offset against monies owed. According to the online Residential Tenancy Interest Calculator, this deposit is valued at \$1,056.12 as at the day of the hearing.

I therefore order that the Landlord is entitled to retain the full value of this deposit under section 72 of the Act against monies owed. I further order that the Landlord is entitled to a monetary order of \$2,217.56 ($\$3,273.68 - \$1,056.12 = \$2,217.56$) for the balance of unpaid rent.

Is either party entitled to recover the filing fee for this application from the landlord?

The Tenant and Landlord were both was partially successful in their applications. I therefore find that the two application fees cancel each other out and that neither party is entitled to recover the amount under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective seven days after it is served on the Tenant(s)**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of **\$2,217.56** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$3,273.68.
Retain Security and Pet Deposits with current value	-\$1,056.12
Total Amount	\$2,217.56

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 1, 2024, under sections 46 and 55 of the Act is successful. The Notice dated March 1, 2024, is cancelled and of no force or effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 9, 2024

Residential Tenancy Branch